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Luann Gould

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Luann Gould, :  
                  :  
                  Plaintiff, : 05 CV 11118 (PBS)  
                  :  
                  – against – :  
                  :  
Lucent Technologies, Inc., : AFFIRMATION OF ROBERT R.  
                  :  
                  Defendant. : THOMAS IN SUPPORT OF  
                  :  
                  :  
                  :  
                  :  
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**Robert R. Thomas**, an attorney duly licensed to practice law in the Commonwealth of Massachusetts, affirms under penalty of perjury as follows:

1. I am an attorney of Harvey, Kleger & Thomas, counsel to Luann Gould (“Gould”). This affirmation is submitted in support of Gould’s Motion in Opposition to Summary Judgment. All documents attached are true and correct copies of the originals.
2. Pertinent pages from the Deposition Transcript of Luann Gould are annexed here as Exhibit A.
3. Pertinent pages from the Deposition Transcript of Pyong Deletis are annexed here as Exhibit B.

WHEREFORE, I respectfully request that the Court deny Lucent's motion for summary judgment in its entirety.

Dated: September 18, 2006

By: /s/ Robert R. Thomas  
Robert R. Thomas

**EXHIBIT A**

Luann Gould

12

1 New Hampshire.

2 Q. Is that near Nashua?

3 A. No.

4 Q. What part of New Hampshire is that?

5 A. Outside Plaistow, Hampstead.

6 Q. Have you taken any educational courses after  
7 the eleventh grade?

8 A. I just received my GED, that's all.

9 Q. What is that?

10 A. G E --

11 Q. G-D --

12 A. General education.

13 Q. Diploma?

14 A. It's equal to a diploma, yeah.

15 Q. What did you take, additional courses of  
16 some sort after the eleventh grade to complete that?

17 A. At Lucent I just took courses preparing for  
18 the GED.

19 Q. Was Lucent the first job you had after the  
20 eleventh grade?

21 A. Yeah, basically. I was there since I was  
22 19.

23 Q. When did you begin work at Lucent?

24 A. October 16, 1979.

Luann Gould

16

1 A. Yes.

2 Q. Where is that?

3 A. 7 Bluebird Lane, Atkinson, New Hampshire.

4 Q. Atkinson?

5 A. Yeah.

6 Q. A-K?

7 A. A-T-K-I-N-S-O-N.

8 Q. Do you have any children?

9 A. Yes.

10 Q. How many?

11 A. Two.

12 Q. Ages, sexes?

13 A. I have a son Edward Desrochers, who is 29  
14 years old. And I have a daughter Shelby Gould, who  
15 is eight years old.

16 Q. When was Shelby born?

17 A. 19 -- July 22, 1997.

18 Q. Was that before you were divorced?

19 A. After. My divorce started in '96, but it  
20 didn't end until '97.

21 Q. Besides Desrochers and Gould, have you been  
22 ever known by any other name?

23 A. No.

24 Q. What's your present address?

Luann Gould

23

1 employment at Lucent, so that would run it from say  
2 about 1996 to 2003, in that approximate time frame,  
3 did you have occasion to see any doctors or health  
4 care providers for any reason at all?

5 A. Yes.

6 Q. Let's do it chronologically. 1996 did you  
7 see any doctor, were you under any doctor's care,  
8 receive any doctor's treatment in 1996?

9 A. I don't believe so.

10 Q. 1997?

11 A. Yes.

12 Q. Who did you see?

13 A. For doctors, I was seen by the Women's  
14 Health Care. I saw a Dr. Hayman. It was at the  
15 Women's Health Care. I saw several doctors there.

16 Q. What did you see them for?

17 A. I was having a high risk pregnancy. I was  
18 hospitalized with kidney failure during my  
19 pregnancy.

20 Q. And then of course you gave birth?

21 A. Correct.

22 Q. In 1997?

23 A. Correct.

24 Q. Did you give birth at a hospital?

Luann Gould

1 Q. Shortly after you gave birth?

2 A. Yeah.

3 Q. Within what, months?

4 A. Within a few months. But before that  
5 situation, two weeks after I delivered Shelby, I was  
6 hospitalized in ICU at the Derry Parker Medical for  
7 conjunctive heart failure.

8 Q. Debbie Parker?

9 A. Derry Parker Medical.

10 Q. What town is that in?

11 A. Derry, New Hampshire.

12 Q. This was two weeks?

13 A. Prior to delivery. It was August 6th, my  
14 dad's birthday.

15 Q. Two weeks after --

16 A. The delivery of Shelby, yeah.

17 Q. Anything else in 1997?

18 A. I don't believe so.

19 Q. Have you had any further treatment or seen  
20 any health care providers after 1997 with respect  
21 either to your kidney or your heart problems or your  
22 tumor problem?

23 A. Well, other than my kidney problem? Well, I  
24 had kidney surgery later.

25

Luann Gould

28

1           A. My daughter had allegations of sexual abuse  
2 by her father, and I was being treated by doctors as  
3 well as my daughter.

4           Q. Both she and you went to what kind of a  
5 health care provider?

6           A. She went to her pediatrician, and she went  
7 to counseling. And I also was in counseling and  
8 under the care of Dr. Cammerilla, too.

9           Q. How long did you continue in counseling or  
10 with Dr. Cammerilla or any other health care  
11 provider in connection with those allegations?

12          A. It was several months, several months.

13          Q. In 2002?

14          A. 2000 to 2002.

15          Q. Do you know approximately how many times  
16 altogether you saw the counselor with respect to  
17 this?

18          A. No.

19          Q. Now, you said 2000 or 2000 --

20          A. Is when it started. The allegations were  
21 brought to my attention in March of 2000.

22          Q. And it lasted for how long, the treatment?

23          A. Because DSS -- the treatment lasted a couple  
24 of years.

Luann Gould

29

1 Q. I interrupted. You were about to say D-E?

2 A. DSS was prosecuting. I went through two  
3 trials, the Brentwood Family Court.

4 Q. Was that eventually resolved and ended in  
5 2002?

6 A. Yes.

7 Q. During that period of time, were you taking  
8 any medication or anything, any kind?

9 A. Yes.

10 Q. What?

11 A. I was taking I believe it was Xanax for  
12 anxiety, and I was being treated for depression.

13 Q. You were taking Zoloft?

14 A. I'm not sure exactly.

15 Q. Were you taking any other medication for  
16 depression?

17 A. No.

18 Q. Leaving aside the situation you've described  
19 that began in March 2000 involving the allegations  
20 of sexual abuse and through 2002, the family court  
21 disposition, during that same period of time, did  
22 you have any other medical issues or problems  
23 concerning yourself?

24 A. No.

Luann Gould

1 missed from work for any reason?

47

2 A. I don't recall. I may have.

3 Q. Well, in 1997 you told us that you had  
4 certain medical --

5 A. Yes, yes.

6 Q. You had the pregnancy and you had the kidney  
7 and you had the heart and you had the tumor?

8 A. Yeah, I was out of work in '97, I know that.

9 Q. Would it surprise you if I were to tell you  
10 the records show that in 1997 you had 86 absences  
11 from work; in 1998, 134; in 1999, 119; in 2000, 116;  
12 in 2001, 95 absences?

13 A. No, it wouldn't surprise me.

14 Q. During that period of time, a number of  
15 those absences were covered, weren't they, by Family  
16 Medical Leave Act, excused absences?

17 A. Yes, between that and disability.

18 Q. Before 2003, do you recall approximately how  
19 many times you requested Family Medical Leave Act  
20 absences?

21 A. No, not offhand.

22 Q. Half a dozen?

23 A. From when, 1990 what?

24 Q. 1997, from the time -- the year in which you

Luann Gould

49

1 Control Plan? I'll call it the ACP.

2 A. Somewhat.

3 Q. Do you recall the fact that under an Absence  
4 Control Plan, there are five levels, one, two,  
5 three, four, five and degrees of seriousness?

6 A. Yes.

7 Q. What can you tell me about your recollection  
8 about the five levels?

9 A. That they exist.

10 Q. What was level one, do you know?

11 A. The first of the levels, first entry of the  
12 Level system.

13 Q. Under the Absence Control Plan, you were  
14 entitled to a certain number of absences per  
15 calendar year, not counting excused absences; is  
16 that right?

17 A. Correct.

18 Q. Do you remember what the number of absences  
19 you were allowed in a year were, the unexcused  
20 number you were allowed?

21 A. I believe it was five days.

22 Q. And do you recall what some of the absences  
23 were that were not counted against your five days?  
24 For example, vacations I imagine were not counted,

Luann Gould

1 correct?

50

2 A. Uh-hum.

3 Q. And FMLA Leave was not counted, correct?

4 A. Right.

5 Q. And jury duty was not counted, correct?

6 A. Correct.

7 Q. Also not counted against these five days

8 were if you were hospitalized at a hospital,

9 correct?

10 A. Correct.

11 Q. And if you had daycare surgery, whether it  
12 was in a hospital or a doctor's office, even though  
13 you did not have to stay overnight, correct?

14 A. Correct.

15 Q. Funeral leave, right?

16 A. Uh-hum.

17 Q. And if you were required to appear in court,  
18 correct?

19 A. Correct.

20 Q. Those were all not counted against your five  
21 days?

22 A. Yes.

23 Q. Now, am I correct that if you had more than  
24 five days of absences in a calendar year that were

Luann Gould

51

1 not exempted under this plan because they didn't  
2 fall in the various categories that we just talked  
3 about, you went to level one to begin with at the  
4 beginning; is that right?

5 A. Correct.

6 Q. And once you went on level one, you got a  
7 verbal warning; is that right?

8 A. Yes.

9 Q. And then if you start the year on level one  
10 and you go over your five days allowed for that next  
11 calendar year, you moved to level two?

12 A. Correct.

13 Q. And at level two, you get a written warning,  
14 correct?

15 A. Yeah, yes.

16 Q. Then if you begin the year at level two and  
17 you go over the -- at that point was it still five  
18 days or was it down to four days? Between level two  
19 and three, it was four days, wasn't it?

20 A. I am not sure. I know it dropped as the  
21 levels or years went on. I believe it dropped.

22 Q. Whether it was four days or five days, let's  
23 say if you exceeded the allowed non-exempt days, you  
24 then moved to level three and got some sort of more

Luann Gould

52

1 formal written warning?

2 A. Yes.

3 Q. Once you were on level three under the  
4 Absence Control Plan and you got one more  
5 non-exempted absence, you would move to level four?

6 A. Correct.

7 Q. And at level four, you'd be in effect given  
8 a final warning and put on a probationary basis; is  
9 that right?

10 A. I believe so.

11 Q. And then once you're on level four, if you  
12 have one additional non-exempted absence during that  
13 same calendar year, that's termination, correct?

14 A. In some cases. Some cases people have been  
15 on level five and put on probation.

16 Q. Now, when you began calendar year 2003, you  
17 were already on level three, weren't you?

18 A. I believe so.

19 Q. And you were then absent in early January  
20 2003 for several days of non-exempted absences.  
21 January 6th, 7th and 8th you were out, did not claim  
22 Family Medical Leave Act or any other qualifying or  
23 exempting reason to be out those days, and those  
24 were counted against your allowance; is that

Luann Gould

1 correct?

53

2 A. Correct.

3 Q. Then in 2003, you were out again in March,  
4 March 3rd through March 28th, approximately three  
5 and a half weeks. But that was all a requested and  
6 a granted FMLA leave; do you recall that?

7 A. I don't recall being out that many days in  
8 March at one time.

9 Q. Do you recall being out in March, though, on  
10 an FMLA leave situation?

11 A. March I believe my daughter had bac -- I'm  
12 not sure if she had strep throat or bacterial  
13 infection. It was one of them. I was out for a few  
14 days.

15 Q. Do you remember being out in March and you  
16 requested -- March 2003 for at least a few days and  
17 you requested FMLA leave, it was granted, you just  
18 don't remember the number of days?

19 A. Correct.

20 MR. SPELFOGEL: Just so the record is  
21 clear, I've marked the Absence Control Plan as Gould  
22 Exhibit Number 4.

23 Q. You were then absent in May 2003 I believe  
24 for two days; is that right?

Luann Gould

58

1 what it says there? This FMLA is what?

2 A. Is not qualified.

3 Q. All right. Can you tell who signed that?

4 A. Yes, Peggy Blumer.

5 Q. Who is Peggy Blumer?

6 A. She's from New Jersey. She works in the  
7 health services department.

8 Q. Employed by Lucent?

9 A. Yes.

10 Q. Now, the second page, who wrote that first  
11 line, Greater Hampstead Family?

12 A. I did, Luann.

13 Q. And then you signed immediately after that?

14 A. Correct.

15 Q. And you dated it, May 7, '03?

16 A. Correct.

17 Q. Did you fill out the next few lines, item  
18 one and item two?

19 A. Yes, I did.

20 Q. What about item -- the rest of the items?  
21 Item three is not filled out. Item four says -- I  
22 think it says Luann was absent due to illness of her  
23 daughter; is that correct?

24 A. Correct.

Luann Gould

65

1 had underlined that. Did you underline that?

2 A. No, I didn't.

3 Q. Did somebody at Lucent underline that for  
4 you? It wasn't underlined in your presence?

5 A. I don't recall it.

6 Q. Were you out of work for more than three  
7 consecutive calendar days because of your daughter's  
8 condition in May of 2003?

9 A. In May for the chicken pox?

10 Q. Correct.

11 A. I believe it was two days.

12 Q. Were you out of work for more than three  
13 consecutive calendar days in July 2003 because of  
14 the conjunctivitis condition of your daughter?

15 A. No.

16 Q. Now, in July when your daughter had  
17 conjunctivitis, did you take your daughter to the  
18 doctor, also?

19 A. Yes.

20 Q. Was it to Dr. Cammerilla?

21 A. Yes.

22 Q. So that was about a ten-minute drive in each  
23 direction; is that right?

24 A. Correct.

Luann Gould

1           Q. Do you recall at any time during July 2003  
2 having a conversation with Pyong Deletis about your  
3 FMLA situation?

4           A. On July 7th when I called into work and  
5 spoke to Pyong, I told her that, you know, the  
6 situation my daughter, and she had told me that she  
7 had already contacted Peggy Blumer in New Jersey and  
8 let her know I was out again. And she said Peggy  
9 said you have no days left. And I told her that my  
10 daughter was contagious. I had to be home with her,  
11 and I would be in the following day, which I did.

12          Q. So Ms. Deletis suggested that you contact  
13 Peggy Blumer directly, and you did?

14          A. She didn't suggest I contact Peggy Blumer.  
15 She suggested I get the FMLA paperwork filled out  
16 from the doctor at that time, the day I spoke to her  
17 on 7/7.

18          Q. And did you get it filled out by the doctor?

19          A. Yes, I did, yes.

20          Q. Do you know whether Ms. Deletis herself  
21 contacted Ms. Blumer to see if there was anything  
22 you could do to help with your qualifying for FMLA  
23 leave?

24          A. I don't know if there was any conversation

1 A. Brian Ahern, Steve Sickel.

2 Q. Was Ms. Deletis there?

3 A. Yes, and Steve Sickel's supervisor, too, I  
4 believe the function manager, Mark. The union, Gary  
5 Nielson was there. And I believe that would be it.

6 Q. Was there any discussion?

7 A. They handed me this paper and --

8 Q. Who handed it to you?

9 A. I believe it was Steve Sickel.

10 Q. Who said what to whom?

11 A. Said that -- I believe he told me that I was  
12 being put on level five, and I was going to be  
13 terminated.

14 Q. Did he or anyone else at that meeting go  
15 over the information on the level five form?

16 A. Well, they said because of me not qualifying  
17 brought me up to level five. And I begged Steve  
18 Sickel to not let me lose my job. That I had a half  
19 a vacation day left, and I need my job to take care  
20 of my child. And there was no hearing of anything  
21 from me. He told me that the decision had been  
22 made, and I was leaving today. There was no  
23 talking.

24 Q. Was there a union representative present

Luann Gould

1           A. She had suggested that, you know, to call  
2 her. And I had already, you know, given her all the  
3 FMLA paperwork and all. I was told by the union  
4 that there was no need to contact Peggy Blumer any  
5 further.

87

6           Q. Now, you have an allegation in paragraph 31  
7 of your complaint in this matter, which I'm sure  
8 your attorney can show you here, in which you allege  
9 that Peggy Blumer told your supervisor that she  
10 would have denied your previous request for FMLA  
11 leave time off in March 2003 that other persons at  
12 Lucent had approved. How do you know that?

13          A. It was in the documentation that the union  
14 had gotten from e-mails stating that had she been  
15 the health care provider on the previous FMLA, that  
16 she would also have not qualified those.

17          Q. Do you have a copy or copies of the material  
18 you are referring to?

19          A. I believe my lawyer has it.

20            MR. SPELFOGEL: Could we have that  
21 produced, please?

22            MR. THOMAS: Yes.

23            MR. SPELFOGEL: We'll reserve Gould  
24 Exhibit Number 16.

Luann Gould

1       when I was out is the day that Peggy Blumer denied  
2       the May. And then from there on, it went on level  
3       five from the 7th and termination.

89

4           Q. Let me see if I understand you correctly. I  
5       believe what you just said was that you believe the  
6       company violated the Family Medical Leave Act in  
7       connection with your May 2003 absence because it  
8       didn't tell you it was denying FMLA leave until  
9       after the July 7th absence?

10          A. Yeah, I didn't know if it was approved,  
11       denied.

12          Q. Why do you allege that the denial of your  
13       July 7th absence as FMLA leave was illegal?

14          A. Because it was a serious illness. Because  
15       if it wasn't treated, it could lead to blindness.  
16       And they stated it wasn't a serious illness, and it  
17       was. And she was on treatment, on medication all  
18       that week. They said three days of illness, and it  
19       was over three days. If it didn't fall under the  
20       Family Medical Leave, it would have fallen under  
21       Small Necessity Leave. That was never mentioned to  
22       me until after the August 1st termination.

23          Q. Why do you believe it was qualified leave or  
24       should have been qualified leave under the Small

Luann Gould

1 retaliated against me?

91

2 Q. No, do you have any evidence of retaliation,  
3 except for the fact that you were terminated, you  
4 lost your job?

5 A. Well, documentation, holding back paperwork  
6 and documentations that I've seen from e-mails back  
7 and forth about how she would have denied my  
8 previous ones. There's no reason --

9 Q. These are the documents that we've already  
10 reserved Exhibit Numbers 16 and 17 for; is that  
11 right?

12 MR. THOMAS: Correct.

13 A. Correct.

14 Q. Besides that documentation and the fact that  
15 you lost your job, do you have any other evidence  
16 that you were retaliated against?

17 A. Well, I don't know -- can I ask my lawyer if  
18 I can --

19 Q. Of course.

20 (Attorney/client discussion off the  
21 record)

22 A. Well, there was comment from an employee in  
23 my department that they had known that I was going  
24 to be terminated, that Pyong had told the layout